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November 4, 2024

VIA ECF

Hon. Renée Marie Bumb, U.S.D.J.
United States District Court
District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101

RE: *In re Toronto-Dominion Bank/First Horizon Corp. Sec. Litig.*,
No. 1:23-cv-02763-RMB-AMD

Dear Judge Bumb:

We, along with co-counsel, represent Lead Plaintiffs and write concerning a development that makes it necessary for Lead Plaintiffs to seek to amend their Second Amended Complaint (ECF No. 46) (“SAC”). Lead Plaintiffs have met and conferred with Defendants and, pursuant to the procedures contemplated by Fed. R. Civ. P. 15(a), respectfully submit a proposed schedule for the filing of a further amended complaint as set forth in the [Proposed] Order attached hereto as Ex. A.

By way of background, and as the Court is aware, the SAC alleges that Toronto-Dominion Bank and First Horizon Bank made a series of false and misleading misrepresentations concerning TD’s anti-money laundering (“AML”) practices, the status of TD’s proposed acquisition of First Horizon, and the related regulatory issues and scrutiny concerning TD’s AML practices that ultimately doomed the First Horizon Merger. In response, Defendants filed motions to dismiss the SAC, which are now fully briefed and pending before the Court.

On October 10, 2024, TD announced that it had resolved numerous government investigations into TD’s AML practices that led to the termination of the First Horizon Merger, including with the U.S. Department of Justice (“DOJ”), the Financial Crimes Enforcement Network (“FinCEN”), the Federal Reserve Board (“FRB”) and the Office of the Comptroller of the Currency (“OCC”). Significantly, in connection with those resolutions, TD pled guilty to criminal violations of the Bank Secrecy Act and conspiracy to commit money laundering, agreed to pay over \$3 billion in fines and penalties, and admitted to “willful” violations of AML regulations for nearly a decade. TD further admitted that “high-level executives” and “senior

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executive management” knew of “long-term, pervasive, systemic deficiencies” in TD’s AML program, that the Bank failed to monitor approximately \$18.3 trillion in transaction activity, and that its violations enabled criminal organizations to launder at least \$670 million through TD accounts. In announcing TD’s historic criminal plea, the DOJ highlighted TD’s “staggering and pervasive failures in oversight,” and that by “making its services convenient for criminals, TD Bank became one.”

Notably, the documents filed in connection with TD’s criminal plea and the coordinated resolution of the various regulatory actions against TD are voluminous, spanning hundreds of pages of factual findings about TD’s knowing and willful misconduct—including during the Class Period alleged in this action. For example, TD admitted to facts set forth in dozens of pages describing its AML misconduct when pleading guilty to three felony conspiracy charges. Similarly, FinCEN issued a 99-page consent order with detailed facts underlying the agency’s findings that (i) TD “willfully failed to implement and maintain an AML program that met the minimum requirements of the BSA and FinCEN’s implementing regulations”; (ii) TD “was aware that its AML practices were facing intense scrutiny by regulators and law enforcement” during the Class Period but knowingly failed to address them; and (iii) TD’s criminal AML deficiencies were “known to AML senior management,” and the civil monetary penalty it imposed—the largest in FinCEN history—was warranted due to the “pervasiveness of wrongdoing” and “management’s complicity in, condoning or enabling of, or knowledge of the conduct underlying the violations.” Furthermore, the OCC issued a consent order imposing an “asset cap” and severe restrictions on TD’s U.S. growth due to TD’s AML violations, and the FRB issued a cease-and-desist order imposing a \$123.5 million civil money penalty on TD. Criminal investigations of TD employees remain ongoing, and the DOJ has made clear that “no individual involved in TD Bank’s illegal conduct is off limits.”¹

In light of the numerous new facts and admissions set forth in these documents—all of which bear directly on Lead Plaintiffs’ claims—Lead Plaintiffs determined that they would seek leave to amend the SAC. Lead Plaintiffs therefore asked Defendants whether they would consent to such amendment, and Defendants informed Lead Plaintiffs that they would consider the request after reviewing a copy of the proposed Third Amended Complaint (“TAC”).

Accordingly, the parties agreed, subject to the Court’s approval, to the following schedule: (i) Lead Plaintiffs shall provide Defendants with a copy of the proposed TAC by December 19, 2024; (ii) Defendants shall provide Lead Plaintiffs with their decision as to whether they consent to Lead Plaintiffs’ further amendment by January 17, 2025; and (iii) by January 31, 2025, Plaintiffs shall file either (a) the TAC with Defendants’ consent and a proposed schedule for Defendants’ response thereto, or (b) a motion seeking leave to file the TAC and schedule for Defendants’ response thereto. For the Court’s convenience, a [Proposed] Order reflecting these agreed-upon dates is attached as Ex. A.

¹ Certain of the documents relating to TD’s criminal plea and its regulators’ findings are set forth in the accompanying Table of Exhibits.

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We thank the Court for its attention to this matter and welcome the opportunity to address any questions the Court may have regarding this request.

Respectfully submitted,

/s/James E. Cecchi
James E. Cecchi

cc: All counsel of record (via ECF)

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No. 1:23-cv-02763-RMB-AMD

TABLE OF EXHIBITS

- Ex. A Joint Stipulation and [Proposed] Scheduling Order for Lead Plaintiffs' Filing of a Third Amended Complaint
- Ex. B U.S. Department of Justice, Press Release, *TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution*, Oct. 10, 2024, available at <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>
- Ex. C Plea Agreement, *United States v. TD Bank, N.A.*, No. 24-cr-667-ES (D.N.J.) (ECF No. 4)
- Ex. D Plea Agreement, *United States v. TD Bank US Holding Company*, No. 24-cr-668-ES (D.N.J.) (ECF No. 4)
- Ex. E Consent Order Imposing Civil Money Penalty, *In the Matter of TD Bank, N.A. and TD Bank USA, N.A.*, No. 2024-02
- Ex. F Fact Sheet: OCC Cease and Desist Order and Civil Money Penalty against TD Bank N.A. and TD Bank USA, N.A., Oct. 10, 2024
- Ex. G Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent, *In re Toronto-Dominion Bank, TD Group U.S. Holdings, LLC, and TD Bank U.S. Holding Company*, Nos. 24-027-B-FB, 24-027-CMP-FB, 24-027-B-HC, 24-027-CMP-HC